PUBLICATION INFORMATION:

Rexroat v. Barnhart, 2002 WL 1712577 (N.D. Iowa March 29, 2002) (Unpublished decision)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

TED G. REXROAT, Plaintiff, vs. JO ANN B. BARNHART, COMMISSIONER OF SOCIAL SECURITY, Defendant.	No. C01-4020-MWB **MEMORANDUM OPINION AND ORDER REGARDING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

I. INTRODUCTION

This action for judicial review of denial of social security benefits comes before the court pursuant to the December 20, 2001, Report and Recommendation of Magistrate Judge Paul A. Zoss (Doc. 8), plaintiff Ted Rexroat's March 7, 2002, Objections to that Report and Recommendation (Doc. 11) and defendant Commissioner of Social Security's March 12, 2002, Response to Mr. Rexroat's Objections (Doc. 12).

Mr. Rexroat contends he has been disabled since January 1, 1997, "due to complications from a right wrist fusion, hepatitis C, liver disease with ascites, and sensory neuropathy and pain in the lower extremities." (Doc. 6, p. 1). He brings this action seeking review of a decision of an administrative law judge (ALJ) denying his applications for disability insurance (DI) benefits under Title II of the Social Security Act (Act), 42 U.S.C. §§ 401 et.seq., and supplemental security income (SSI) benefits under Title XVI of the Act, 42 U.S.C. §§ 1381 et.seq. The ALJ's decision was issued on September 29, 1999, following a hearing on June 22, 1999. The ALJ found that Mr. Rexroat was not disabled within the Act at any time through the date of his decision.

In his Report and Recommendation, Judge Zoss found the ALJ's decision was

substantially supported by the record as a whole, and recommended judgment in favor of the Commissioner. In particular, Judge Zoss found substantial evidence existed to support the ALJ's determination that Mr. Rexroat retained the ability to engage in substantial gainful activities, other than his past relevant work. (Doc. 8, p. 25-26). This finding concerning Mr. Rexroat's residual functional capacity is the only proposed finding disputed by Mr. Rexroat in his Objections, in support of which he has cited several pages of the transcript as evidence to the contrary. (Doc. 11).[1]

II. LEGAL ANALYSIS

A. STANDARDS OF REVIEW

1. Review of a Report and Recommendation

The standard of review to be applied by the district court to a report and recommendation of a magistrate judge is established by statute:

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). The Eighth Circuit Court of Appeals has repeatedly held that it is reversible error for the district court to fail to conduct a *de novo* review of a magistrate judge's report where such review is required. *See, e.g., Hosna v. Groose*, 80 F.3d 298, 306

[1] The procedural history of Mr. Rexroat's applications for Social Security benefits is recounted in some detail in Judge Zoss's Report and Recommendation. (Doc. 8, p. 2-3). Similarly, Judge Zoss's report includes a thorough and detailed recitation of the evidence in the transcript. (Doc. 8, p. 3-20 and Appendix A). Since no party has made any objection to these portions of the Report and Recommendation, the court finds it unnecessary to reprise this information here.

(8th Cir.) (citing 28 U.S.C. § 636(b)(1)), *cert. denied,* 519 U.S. 860 (1996); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (citing *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994)). Therefore, because objections have been filed in this case, the court must conduct a de novo review of "those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The court has done so by reviewing the record before Judge Zoss to the extent of determining whether the portions of the transcript cited in Mr. Rexroat's Objections require a conclusion different from that reached by Judge Zoss.

2. Review of an Administrative Denial of Benefits

The standard of judicial review for cases involving the denial of Social Security benefits is based on 42 U.S.C. § 405(g), which provides that "[t]he findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive." This standard of review was recently explained by the Eighth Circuit Court of Appeals as follows:

> Our standard of review is narrow. 'We will affirm the ALJ's findings if supported by substantial evidence on the record as a whole.' *Beckley v. Apfel*, 152 F.3d 1056, 1059 (8th Cir. 1998). 'Substantial evidence is less than a preponderance, but is enough that a reasonable mind would find it adequate to support a decision.' *Id.* If, afer reviewing the record, the Court finds that it is possible to draw two inconsistent positions from the evidence and one of those positions represents the Commissioner's findings, the court must affirm the Commissioner's decision. *See Young v. Apfel*, 221 F.3d 1065, 1068 (8th Cir. 2000). Even if we would have weighed the evidence

> differently, we must affirm the denial of benefits if there is enough evidence to support the other side. *Browning v. Sullivan*, 958 F. 2d 817, 822 (8th Cir. 1992)."

Pearsall v. Massanari, 274 F.3d 1211, 1217 (8th Cir. 2001). In applying this standard, the court must consider evidence that detracts from the Commissioner's decision as well as evidence that supports it. *Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citing *Craig v. Apfel*, 212 F.3d 433, 436 (8th Cir. 2000)); *Cooper v. Secretary*, 919 F.2d 1317, 1320 (8th Cir. 1990) (the court must conduct "a scrutinizing analysis" of the record) (citing *Thomas v. Sullivan*, 876 F.2d 666, 669 (8th Cir. 1989)). In cases where the Commissioner's position is not supported by substantial evidence in the record as a whole, the court must reverse. *See Lannie v. Shalala*, 51 F.3d 160, 164 (8th Cir. 1995). However, as long as there is substantial evidence on the record as a whole to support the Commissioner's decision, the court "may not reverse it because evidence exists in that record that would have supported a contrary outcome," or because the court "would have decided the case differently." *Gowell*, 242 F.3d at 796 (citing *Craig*, 212 F.3d at 436, and *Browning*, 958 F. 2d at 822).

Accordingly, in reviewing the record in this case, the court must determine whether the portions of the transcript relied on by Mr. Rexroat in his Objections sufficiently detract from the ALJ's decision that the court must conclude his decision is not supported by substantial evidence on the record as a whole. *Id.*

B. PLAINTIFF'S OBJECTIONS

As indicated earlier, the only proposed finding by Judge Zoss that Mr. Rexroat disputes concerns the ALJ's determination that Mr. Rexroat retained the residual functional capacity for substantial gainful employment, even though he could not return to his past relevant work. Mr. Rexroat generally contends this determination is inconsistent with evidence that from at least January 1, 1997, his physical condition progressively

deteriorated, and consequently he was unable to find and/or keep jobs and was eventually granted DI benefits based on a September 29, 2001, disability onset date. Mr. Rexroat specifically argues that this determination is not supported by substantial evidence, and lists transcript pages 45, 48, 49, 51, 52, 67, 278, 280, 281, 368, 477, 481, 484, 485, 503, 506 and 507 as support for his position. (Doc. 11). All of the transcript pages cited by Mr. Rexroat contain evidence regarding his subjective complaints. The first several pages are excerpts from his testimony. *See* Tr. 45-48, 67 (testifying that, while taking Interferon and Ribavirin, he felt sick all the time with flu-like symptoms causing him to eventually be terminated from his telemarketing job because he missed too much work); and Tr. 49-52 (stating that, when he began working as a painter's helper the following spring, he started having problems with a lot of fatigue, lower back pain and swelling, numbness, rashes and nightly pain with his legs). The rest of the cited pages consist of various medical records. *See* Tr. 278, 280, 281, 484, 485 (notes by Drs. Robison and Wilkerson dated August 1996 through November 1996 regarding Rexroat's wrist-related pain complaints); Tr. 368-69 (December 1997 notes from the in-patient alcohol treatment program, indicating Rexroat had complaints of kidney pain); and Tr. 477, 481 (early 1998 notes and a letter by Dr. Robison, stating his observation that Mr. Rexroat was complaining of bilateral flank pain, and increasing lethargy and fatigue, and his opinion that Mr. Rexroat will always have chronic fatigue from his hepatitis).

1. Assessment of a Claimant's RFC in General

A claimant's residual functional capacity (RFC) is what he can do despite his limitations. *Pearsall*, 274 F.3d at 1217. It is the claimant's burden, and not the Commissioner's burden, to prove the claimant's RFC. *Id.* (citing *Anderson v. Shalala*, 51 F.3d 777, 779 (8th Cir. 1995)). It is the ALJ's responsibility to determine a claimant's RFC based on all relevant evidence, including medical records, observations of treating

physicians and others, and claimant's own description of his limitations. *Id.* (again citing *Anderson*, 51 F.3d at 779). *See also Lauer v. Apfel*, 245 F.3d 700, 703-04 (8th Cir. 2001) (The ALJ " 'bears the primary responsibility for assessing a claimant's [RFC] based on all relevant evidence….'," quoting *Roberts v. Apfel*, 222 F.3d 466, 469 (8th Cir. 2000)); *Vaughn v. Heckler*, 741 F.2d 177, 179 (8th Cir. 1984) (In determining the claimant's RFC, the ALJ has a duty to establish, by competent medical evidence, the physical and mental activity that the claimant can perform in a work setting, after giving appropriate consideration to all of her impairments).

Before a claimant's RFC is determined, the claimant's credibility must be evaluated using the guidelines set out in *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984) (history omitted). *Pearsall*, 274 F.3d at 1218. Under *Polaski*, when evaluating subjective complaints, the ALJ must consider the objective medical evidence and any evidence relating to a claimant's daily activities; duration, frequency and intensity of pain; dosage and effectiveness of medication; precipitating and aggravating factors; and functional restrictions. *Id. (*citing *Polaski* and listing these factors). *See also Dunahoo v. Apfel*, 241 F.3d 1033,1038 (8th Cir. 2001)(same); *Gowell*, 242 F.3d at 796 (citing *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998)). Other relevant factors include the claimant's relevant work history and the absence of objective medical evidence to support the complaints. *Gowell*, 242 F.3d at 796 (again citing *Black*). As often stated by the Eighth Circuit Court of Appeals, "there is no doubt that the claimant is experiencing [discomfort] the real issue is how severe that [discomfort] is." *Id.* (citing *Woolf v. Shalala*, 3 F.3d 1210, 1213 (8th Cir. 1993), in turn quoting *Thomas v. Sullivan*, 928 F.2d 255, 259 (8th Cir. 1991)). The ALJ meets his or her burden to demonstrate grounds for discounting subjective complaints where the ALJ articulates the inconsistencies in the record as a whole. *See Pearsall*, 274 F.3d at 1218 (citing *Polaski*). See *also Dunahoo*, 241 F.3d at 1038 ("The ALJ may discount complaints of pain if they are inconsistent with the evidence as a whole."); *Hogan v. Apfel*,

239 F.3d 958, 962 (8th Cir. 2001) (same); *Haley v. Massanari*, 258 F.3d 742, 748 (8th Cir. 2001) (same); *Lowe v. Apfel*, 226 F.3d 969, 972 (8th Cir. 2000) (Although an ALJ "may not discount a claimant's complaints solely because they are not fully supported by the objective medical evidence, . . . the complaints may be discounted based on inconsistencies in the evidence as a whole") (citing *Polaski*).

Moreover, the ALJ "is not required to discuss methodically each *Polaski* consideration, so long as he acknowledged and examined those considerations before discounting [the claimant's] subjective complaints." *Lowe,* 226 F.3d at 972 (further stating that "[w]here adequately explained and supported, credibility findings are for the ALJ to make") (citations omitted)). "If the ALJ discredits a claimant's credibility and gives a good reason for doing so, [the court] will defer to its judgment *even if every [Polaski] factor is not discussed in depth.*" *Dunahoo*, 241 F.3d at 1338 (emphasis added) (citing *Brown v. Chater*, 87 F.3d 963, 966 (8th Cir. 1996); *Johnson v. Apfel*, 240 F.3d 1145, 1148 (8th Cir. 2001). "Any arguable deficiency . . . in the ALJ's opinion-writing technique does not require the Court to set aside a finding that is supported by substantial evidence." *Johnson*, 240 F.3d 1145 at 1149. It is well settled that, "the credibility of a claimant's subjective testimony is primarily for the ALJ to decide, not the courts." *Pearsall*, 274 F.3d at 1218 (citing *Benskin v. Bowen,* 830 F.2d 878, 882 (8th Cir. 1987)); *Holmstrom v. Massanari*, 270 F.3d 715, 721 (8th Cir. 2001) (same, citing *Polaski*); *Johnson*, 240 F.3d at 1147 ("The ALJ is in the best position to determine the credibility of the testimony and is granted deference in that regard").

2. Assessment of Mr. Rexroat's RFC

In this case, the ALJ specifically found Mr. Rexroat retained the RFC to perform a wide variety of light and sedentary work, including the following jobs identified by a vocational expert - telemarketer, marker and cashier. In assessing Mr. Rexroat's RFC, the

ALJ found Mr. Rexroat's subjective complaints were "not credible or consistent with the medical evidence or opinion in record." He found Mr. Rexroat retained the physical ability to lift 20 pounds; sit, stand or walk six hours in an eight-hour day; and do simple grasping and fine manipulations, but was unable to use his right upper extremity for tasks involving the use of power tools that cause significant vibration. (Tr. 21-22). The ALJ indicated that his RFC findings were made after careful consideration of the entire record. (Tr. 17, 21). In particular, he discussed medical evidence, as well as evidence of Mr. Rexroat's work, educational and daily activities, that he found to be inconsistent with Mr. Rexroat's subjective complaints. (Tr. 17-20).

3. Discussion

The critical issue on review is whether the ALJ properly determined Mr. Rexroat's RFC for substantial gainful activities, which includes the related issue of whether the ALJ properly evaluated the credibility of Mr. Rexroat's subjective complaints.

Having thoroughly reviewed the ALJ's decision, the pages of the transcript cited in Mr. Rexroat's Objections and the remainder of the record, the court finds that the ALJ's RFC determination is supported by substantial evidence on the record as a whole. *See Pearsall*, 274 F.3d at 1217 (citing *Beckley*, 152 F.3d 1059). As noted by Judge Zoss, substantial evidence exists to find that Mr. Rexroat's subjective complaints did not preclude him from engaging in all types of substantial gainful activity, and that he retained the RFC to work in a variety of sedentary jobs, at a minimum. Contrary to Mr. Rexroat's contention, the record as a whole does not show that his impairments had progressively worsened to the point of preventing him from working *during the relevant period from January 1, 1997 (the alleged onset date of Mr. Rexroat's disability) through September 29, 1999 (the date of ALJ's decision)*. That Mr. Rexroat may have been awarded DI benefits for an unspecified disability based on a September 29, 2001, disability onset date is not

inconsistent with the ALJ's decision for the relevant period.

More specifically, the court is unpersuaded that the portions of the transcript cited in Mr. Rexroat's Objections, all of which concern his subjective complaints, sufficiently detract from the ALJ's RFC determination, so as to require that it be rejected. *See Gowell,* 424 F.3d 796. First, the court notes that Judge Zoss's Report and Recommendation indicates Judge Zoss was aware and considered all of the cited transcript sections. Second, even if the cited transcript sections might be sufficient to support a contrary finding, the court is not allowed to substitute its opinion for that of the ALJ, who was in a better position to assess Mr. Rexroat's credibility, *see Brown,* 87 F.3d at 965 (*citing Woolf,* 3 F.3d at 1213), nor may the court reverse the ALJ's decision so long as there is substantial evidence on the record as a whole to support it, even if evidence exists to support a contrary outcome, *see Gowell,* 242 F.3d at 796. Third, even though the court does not doubt Mr. Rexroat experienced symptoms related to his chronic impairments during the relevant period, the question that must be addressed is whether these symptoms were so severe that he was unable to work. *See Gowell,* 1242 F.3d at 796 (citations omitted); *Jones v. Chater,* 86 F.3d 823, 826-27 (8th Cir. 1996) ("The mere fact that working may cause pain or discomfort does not mandate a finding of disability"); *Cruse v. Bowen,* 867 F. 2d 1183, 1186 (8th Cir. 1989) (same).

Based on a careful examination of the entire record, the court believes the evidence indicates the ALJ (and Judge Zoss) adequately considered Mr. Rexroat's subjective complaints. Although the ALJ could have been more articulate, he is not required to discuss all the evidence submitted and his failure to cite specific evidence does not indicate that it was not considered. See *Black,* 143 F.3d at 386. Furthermore, the Eighth Circuit Court of Appeals has consistently held that an ALJ's deficiency in opinion-writing is not a sufficient reason for setting aside an administrative finding where the deficiency had no practical effect on the outcome of the case. *Senne v. Apfel,* 198 F.3d 1065, 1076 (8th Cir.

1999) (rejecting the claimant's argument that the conclusory form of the ALJ's decision alone justifies remand) (citing *Benskin*, 830 F.2d at 883). Here, any arguable deficiency in the ALJ's opinion-writing has no practical effect on the outcome of this matter because substantial inconsistencies exist in the record as a whole to support the ALJ's decision to discount Mr. Rexroat's subjective complaints, as summarized below.

First, the evidence shows that Mr. Rexroat was urged several times by his doctors to seek full medical care at the VAMC since he had no funds or insurance; however, the record indicates that he never followed their advice and that in August 1999 he specifically told Dr. Robison he did not want to go to the VAMC. (Tr. 476-81, 503, 507, 512). *See e.g.*, *Gowell*, 242 F.3d at 796-97 (refusal to follow doctor's recommendations may be properly considered when determining credibility); *Gwathney v. Chater*, 104 F.3d 1043, 1045 (8th Cir. 1997) (failure to seek treatment despite multiple recommendations to do so militates against a finding of disability); *Murphy v. Sullivan*, 953 F.2d 383, 386-87 (8th Cir.1992) (claimant's failure to seek low-cost medical treatment was inconsistent with her subjective complaints). Furthermore, the record indicates Mr. Rexroat did not seek or receive any medical care or consultation from August 1998 until a week before his June 1999 hearing. (Tr. 298, 512; Doc. 8, p. 18 and Appendix A). The evidence also indicates Mr. Rexroat never took much if any prescription medication to relieve his pain and other symptoms. (Tr. 54-55, 174-81, 232). *See e.g.*, *Haynes v. Shalala*, 26 F.3d 812, 814 (8th Cir. 1994) (lack of strong pain medication was inconsistent with disabling pain); *Nelson v. Sullivan*, 966 F.2d 363, 367 (8th Cir.1992) (the mere use of nonprescription pain medication is inconsistent with complaints of disabling pain). *See also Singh v. Apfel*, 222 F.3d 448, 453 (8th Cir. 2000) (a claimant's allegations of disabling pain may be discredited by evidence that the claimant received only minimal medical treatment and/or has taken only occasional pain medication); *Comstock v. Chater*, 91 F.3d 1143, 1147 (8th Cir. 1996) (concluding that claimant's subjective complaints were properly discounted where claimant

failed to pursue regular medical treatment, and took no medication other than aspirin).

In addition, as noted in the ALJ's decision, the record shows that the only limitation imposed by Mr. Rexroat's treating physicians on Mr. Rexroat's ability to work consisted of their recommendation that he avoid construction or other heavy level work (particularly involving his right wrist), and Dr. Robison specifically recommended that he seek a sedentary-type job. (Tr. 18-19, 275, 477, 482). *See e.g.*, *Johnson v. Chater*, 87 F.3d 1015, 1017-18 (8th Cir. 1996) ("The strongest support in the record for the ALJ's finding that [the claimant] is not disabled is the lack of reliable medical opinions to support [his] allegations of a totally disabling condition"); *Brown*, 87 F.3d at 965 (lack of significant medical restrictions imposed by treating physicians supported ALJ's decision denying benefits); *Onstead v. Sullivan*, 962 F.2d 803, 805 (8th Cir.1992) (a treating physician's opinion, while not controlling, is accorded substantial weight); *Cruse*, 867 F.2d at 1186 (the lack of objective medical evidence to support the degree of severity of alleged pain is a factor to be considered). As the ALJ further noted, medical evidence dated August 24, 1999, indicated that Mr. Rexroat's hepatitis was stable, his feet were stable, and medication was helping control his condition. (Tr. 19, 503).

The record also contains evidence, as discussed by the ALJ, showing that Mr. Rexroat did some part-time work during 1997; worked as a part-time telemarketer from May 1998 through September 1998; worked odd jobs, like raking leaves, in early 1999; and at the time of the June 1999 hearing, had been working as a painter's helper and/or janitor for two months, approximately five days week, eight to nine hours a day. (Tr. 18, 20, 57-59, 121-22, 125-26, 207, 214, 395). *See e.g.*, *Dunahoo*, 241 F.3d at 1038-39 (seeking work and working at a job while applying for benefits are activities inconsistent with complaints of disabling pain) (citations omitted); *Comstock*, 91 F.3d at 1147 (claimant's work activities during claimed disability period held inconsistent with subjective complaints); *Bentley v.*

Shalala, 52 F.3d 784, 786 (8th Cir. 1995)(claimant's record of contemplating work as evidenced by his application for jobs during claimed disability period indicates he did not view his pain as disabling). *Naber v. Shalala*, 22 F.3d 186, 188 (8th Cir. 1994) (work performed during any period claimant alleges he was under a disability may demonstrate an ability to engage in substantial gainful activity); *Cooper*, 919 F.2d at 1320 (ALJ's decision upheld where record clearly established that claimant was employed full-time for about six months prior to administrative hearing); *Zenker v. Bowen*, 872 F.2d 268, 270 (8th Cir. 1989) (present levels of work activity may indicate that a claimant is able to do more work that he or she is actually doing). The ALJ found that Mr. Rexroat's work activities in 1997, 1998 and 1999 represented "probative evidence of the claimant's ability to perform work at substantial gainful activity levels within his RFC" and was "clearly inconsistent with an allegation of disability beginning January 1, 1997." (Tr. 17, 18).

Lastly, as cited by the ALJ, the record includes evidence indicating that, besides working, Mr. Rexroat also attended school, did volunteer work, engaged in various recreational activities such as fishing, hunting and going for walks, and generally took care of his own cooking, laundry, and housework. (Tr. 19, 20, 128-32, 317, 327, 395, 412, 491). The ALJ (and Judge Zoss) found this evidence showed that Mr. Rexroat was able to lead an active life despite his impairments. (Tr. 20; Doc. 8, p. 25). *See e.g.*, *Haley*, 258 F.3d at 748 (inconsistencies between subjective complaints and daily living patterns diminish credibility); *Johnson v. Apfel*, 240 F.3d at 1148-49 (acts inconsistent with claimant's assertion of disability reflect negatively upon that claimant's credibility, and the fact that claimant was able to carry on a normal life contributes to finding that his impediments were not disabling); *Wilson v. Chater*, 76 F.3d 238, 241 (8th Cir. 1996) (although daily activities alone do not disprove disability, they are a factor to consider in evaluating subjective complaints); *Haynes*, 26 F.3d at 814-15 (ALJ may consider daily activities inconsistent with subjective complaints).

As a final point it is important to note that the ALJ did not fully disregard Mr. Rexroat's subjective complaints in determining his RFC. First, the ALJ rejected an RFC assessment determination that Mr. Rexroat had the ability to perform medium level work because it was inconsistent with the medical evidence and opinions of Mr. Rexroat's treating physicians. (Tr. 19). In addition, the ALJ considered and gave some weight to Mr.Rexroat's subjective complaints as non-exertional impairments limiting his RFC when the ALJ posed his hypothetical question to the vocational expert. *See* Tr. 68-69 (included assumption that Rexroat was also experiencing some leg swelling, a rash and some flu-like symptoms, which may or may not have been from the medication he was taking during a treatment program for hepatitis or from the hepatitis itself; wore medically-prescribed socks; and took Ibuprofen for pain).

In summary, substantial evidence exists on the record as a whole to support the ALJ's decision that Mr. Rexroat's subjective complaints were not fully credible and that Mr. Rexroat retained the RFC for at least sedentary work. The ALJ properly considered the totality of the record consistent with *Polaski*, and pointed to significant inconsistencies between Mr. Rexroat's complaints and other evidence in the record. The ALJ appropriately discounted Mr. Rexroat's complaints to the extent they were not credible based on "inconsistencies in the record as a whole." *See Lowe*, 226 F.3d at 972 (citing *Polaski*). After discrediting Mr. Rexroat's testimony, the ALJ properly formulated his RFC based on his remaining credible abilities. The ALJ's RFC findings are adequately supported by all of the evidence in the record, especially the opinions of his treating physicians.

IV. CONCLUSION

Having reviewed the entire record, the transcript, the parties' pleadings and Judge Zoss's findings of fact and conclusions of law in his December 20, 2001, Report and Recommendation in light of Mr. Rexroat's Objections, the court finds no error, **overrules**

Mr. Rexroat's Objections, and **accepts** the Report and Recommendation. Therefore, pursuant to that Report and Recommendation, **judgment shall be entered in favor of the defendant and against the plaintiff.**

IT IS SO ORDERED.

DATED this 29th day of March, 2002.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA